



SUBJECT: **Guidelines for Determining Waste Management Requirements for Historical Contamination**

The purpose of this guideline is to review the definitions and criteria which distinguish industrial generators from non-industrial generators and promote consistency in the classification of type of solid waste on historically contaminated sites.

INDUSTRIAL FACILITIES

Title 30 Texas Administrative Code (TAC) Section (§) 335.1-(Definitions), defines **industrial solid waste** as, “Solid waste resulting from or incidental to any process of industry or manufacturing or mining or agricultural operation, which may include hazardous waste....”

In this definition, a **solid waste** resulting from any process of industry is an industrial solid waste. If you make a product, and/or change materials by processing them, then you are involved in an industrial activity. Therefore, if you are an industry, **all** waste which you produce is industrial solid waste.

Manufacturing is defined in **Websters Third International Dictionary** as “the process or operation of making wares or other material products by hand or machinery when carried on systematically with division of labor.” If you manufacture products, **all** the solid waste you produce is industrial solid waste.

The term “*incidental to industry or manufacturing*” indicates that to be incidental to an industry the business must provide direct service to industrial facilities and majority of the service must involve support of industrial activities.

When does the same type of business move from being non-industrial to industrial?” If a nonindustrial type of business will add a manufacturing operation to cause the site to engage in industrial activities, then the status would change from non-industrial to industrial type.

NON-INDUSTRIAL FACILITIES

Title 30 TAC §335.1- (Definitions), defines **Municipal Solid Waste** as “Solid waste resulting from or incidental to municipal, community commercial, institutional, and recreational activities; including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial waste.” The key phrase in this statement is “all other solid waste other than industrial waste.”

Non-industrial facilities are basically facilities that do not have or support industrial, manufacturing, agricultural, or mining activities. Non-industrial facilities include retail sales, restaurants, business offices, and hospitals. Please note that clinics, food services, and warehouses associated with an industrial site would be considered industrial.

The term **Municipal** is sometimes substituted for the term non-industrial, but really municipal solid waste is but one part of non-industrial waste and has its own specific definition (Municipal solid waste is defined in the following paragraph). Non-industrial waste also includes wastes from oil, gas or geothermal exploration, as well as wastes regulated under the Commission’s Petroleum Storage Tank Program.

The main criteria in determining if a solid waste is non-industrial involves the question, “Does the solid waste



meet the definition of an industrial solid waste?”. If it does not, it is non-industrial waste.

In summary, if your facility processes raw materials or intermediates into a product and/or your facility manufactures a product, then your facility is industrial. If your facility derives most of its business from one or more industrial facilities then your facility is considered industrial.

Determination of waste type (Industrial Waste and Municipal Solid Waste)

Before the final disposition of a waste is carried out, the site owner or operator must accomplish at least the following:

- 1) Waste type determination (municipal or industrial); and
- 2) Hazardous waste determination in accordance with 30 Texas Administrative Code (TAC) §335.62.

Sections 330.2 and 335.1 of 30 TAC (Definitions), define “**Generator**” as any person, by site, who produces municipal waste or industrial solid waste to be shipped to any other person; or any person whose act first causes the solid waste to become subject to regulation.

There are nine foreseeable scenarios when determining the type of waste present at a given site. The matrix below addresses the major foreseeable scenarios. **Waste type** is determined by the title in the matrix, either municipal or industrial, where the appropriate row and column intersect.

Explanation:

Rows represent present waste generating activities presently at a site. A site may be municipal, industrial, or presently inactive. Inactive sites may include vacant land which could have been active in the past as either municipal, industrial or both categories, or has never been used but has received waste discharges. It may also include waste generating activities which have ceased, when a company has gone out of business.

Columns represent past/ historical activities as determined by records, site inspections, etc. It is possible that the origin of historical wastes or contamination will not be clearly determined. In this case, use the column “ Past-undetermined”.

The 3 scenarios which are in bold type in the table on this page are discussed below:

- ☐ If contamination present on a given site originates from an **industry** which was once on that site, the waste should be managed as an industrial waste, even if the site is presently owned/operated by a municipal entity or business facility.
- ☐ If contamination present on a given site originates from the disposal of waste defined under 30 TAC §335.1 as an industrial waste, the waste should be managed as an industrial waste even if the site is presently owned/operated by a municipal entity or business facility.
- ☐ Conversely, if contamination present at a given site is from the disposal of waste defined under 30 TAC §330.2, as municipal (also known as non-industrial solid waste), then the waste should be

Waste type Matrix for Historical Wastes and Contamination

	Past-Municipal	Past-Industrial	Past-Undetermined
Present-Municipal Generator	Municipal	Industrial	Municipal
Present-Industrial Generator	Municipal	Industrial	Industrial
Present-Inactive Generator	Municipal	Industrial	Either *

* Depending on whether an industrial or a municipal entity conducts the cleanup.

managed as municipal waste even if the site is presently owned/operated by an industrial facility.

- ❑ Thus, in the absence of a current generator, past use dictates the future waste type as in the case of a presently inactive site with a past municipal generator. This approach is also the basis for the “municipal-undetermined” waste and the “industrial-undetermined” waste cases. The historical waste or contamination that is not identifiable by its origin should be classified according to the current facility operator’s activities (industrial/municipal).

The last case “undetermined” is the most problematic. The TNRCC and/or generator will address these on a case-by-case basis. **If the waste determined to be hazardous, then it would come back into regulation as hazardous waste and would be subject to 30 TAC 335, Subchapter S (Risk Reduction Rules) at time of cleanup.** Whatever the classification under this scenario, the Emergency Response Program will have the lead on historical contamination site cleanups.

Hazardous Waste Determination

Under 30 TAC Chapter 335 Subchapter A of the TNRCC rules, all solid waste must be managed in accordance to its classification as hazardous or non-hazardous. When a material first become a solid waste, the generator is required to make a hazardous waste determination pursuant to 30 TAC §335.62. If analytical results show that a waste exhibits one or more characteristics of a hazardous waste as defined in 40 Code of Federal Regulation (CFR) Part 261 Subpart C, that waste must be managed as a hazardous waste under industrial and hazardous waste rules in 30 TAC Chapter 335.



If you have questions concerning historical contamination classification, please call the **Waste Evaluation Section** at **(512) 239-6832**.

If you have questions concerning how to proceed with specific cases of remediation of industrial wastes, municipal hazardous wastes or on an industrial site, please call the **Corrective Action Section** at **(512) 239-2343**.

If you have questions concerning how to proceed with specific cases of remediation of municipal nonhazardous wastes or on a municipal site, please call the **Municipal Solid Waste Division** at **(512) 239-6695**.



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